

§ 74.45

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting must not be used.

(d) Contracts are made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration is given to matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by E.O. 12549 (implemented by the Secretary in 34 CFR Part 85) and E.O. 12689—Debarment and Suspension.

(e) Recipients shall, on request, make available for the Secretary, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase

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threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

[59 FR 34724, July 6, 1994, as amended at 60 FR 6660, Feb. 3, 1995]

§ 74.45 Cost and price analysis.

Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

[59 FR 34724, July 6, 1994, as amended at 60 FR 6660, Feb. 3, 1995]

§ 74.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold must include the following at a minimum—

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained;

(c) Basis for award cost or price.

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(Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

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